

1 James Alan Bush
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3 San Jose, CA 95126
4 (408) 982-3272

5 Plaintiff in pro per
6
7

FILED

2008 MAY 14 AM 11:14

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 *JAB*

12 James Alan Bush,) Case No.: C 08-01354 (RS) JF
13)
14 Petitioner,) MOTION FOR DECLARATORY JUDGMENT
15 v.) FOR CLAIM AND DELIVERY
16 Santa Clara County Department of) Title 42 USCS § 1983 and California
17 Correction, CSI Vicari DOE,) Civ. Code §§ 667, 3379, 3380;
18 Respondents.) California Code Civ. Proc. § 667
19 _____) Judge Jeremy Fogel
20
21
22 PRELIMINARY STATEMENT
23
24 Petitioner, James Alan Bush, on information, belief and established
25 facts, by and through his own counsel of record, in *pro se*, and for the
26 cause of action of claim and delivery against Respondents, Santa Clara
County Department of Correction and CSI Vicari DOE, for the value of
personal property and other damages, states the following:

1 Petitioner in the above-titled cause, moves the court, in connection
2 with the complaint filed on March 10th, 2008, in this matter, to consider
3 the his request for a declaratory judgment and the award of damages
4 based on allegations contained in this motion, without evidentiary
5 hearing, and without oral argument, unless such is desired by the
6 Court. Petitioner respectfully urges the Court to set a date for
7 Respondent to file their answer. The Court is urged to set a further
8 date later for Respondent to file their affidavits and memorandum, with a
9 subsequent date for Petitioner to file, if necessary, a reply memorandum.

10

11 **PRELIMINARY STATEMENT**

12 Petitioner brings this cause of action for claim and delivery, which
13 is governed by California Code Civ. Proc. §§ 511.010-516.050, against,
14 Respondents, Santa Clara County Department of Correction and CSA Vicari
15 DOE, who lawfully acquired, but failed to return on demand, Petitioner's
16 property.

17 It seeks to recover damages for the detention of petitioner's
18 property, pursuant to Code Civ. Proc. §§ 627 and 667; and, for damages
19 for all the detriment proximately caused by the loss of its use,
20 pursuant to Civ. Code § 3333; and, for damages for business loss; and,
21 an award of exemplary damages, pursuant Civ. Code § 3294.

22

23 **PARTIES**

24 1. Petitioner was a resident of the City of San Jose, County of Santa
25 Clara, State of California, residing at 1471 McDaniel Avenue; and,
26 Petitioner now is a resident of the City of San Jose, County of

1 obtain by completing a lost property claim form and a purchase
2 receipt. Per Respondent Vicari and the established policy of the
3 Santa Clara County Department of Correction, Petitioner would be
4 reimbursed in a few weeks.

5 9. A few days later, Petitioner completed an insurance claim form and
6 attached the purchase receipt for the phone, and then submitted it
7 to the Respondents *in persona*.

8 10. On or around the end of May, 2007, Respondent Vicari requested
9 that Petitioner supply a copy of the service agreement for the
10 phone. Petitioner complied with her request, although, according to
11 Respondent Vicari, it was not a prerequisite for reimbursement.

12 11. On or around the end of July, 2007, Respondent Vicari requested that
13 Petitioner provide a photocopy of a price tag, showing the current
14 price of the phone model, by visiting a MetroPCS store, as well as
15 a statement from a salesperson, verifying the amount. Petitioner
16 did not comply with this request, because it is not a prerequisite
17 for reimbursement, it is not required by Respondents' of other
18 persons in similar circumstances, and is, therefore, unreasonably
19 burdensome.

20
21 **DAMAGES**

22 12. During, and as a proximate result of, Respondents' loss of the
23 personal property described above, Petitioner suffered the loss of
24 the use and enjoyment of his personal property.

25 13. Accordingly, Petitioner seeks damages in the amount of \$300,
26 which is the original value of the property, pursuant to Code

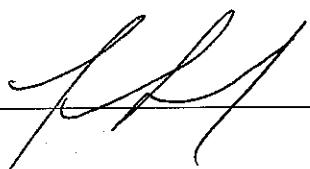
1 Civ. Proc. §§ 627 and 667; and, the petitioner also seeks damages
2 for all the detriment proximately caused by the loss of use of
3 the property, pursuant to Civ. Code § 3333; and, Petitioner seeks
4 exemplary damages due to the oppressive claim requirements, which
5 were a product of Respondents' personal animus towards Petitioner,
6 pursuant to Civ. Code § 3294.

7

8 **RELIEF REQUESTED**

9 WHEREFORE, Petitioner prays judgment as follows:

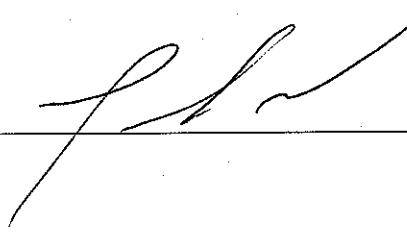
- 10 1. For a declaratory judgment in favor of the petitioner, finding that
11 petitioner is entitled to the aforementioned property.
12 2. For damages for the value of the property in the sum of \$300;
13 3. For damages for loss of use according to proof;
14 4. For exemplary damages according to proof;

15 Petitioner:  Dated: 5-14-08

16

17 **CERTIFICATE OF SERVICE**

18 A copy of the above notice of motion was mailed by certified
19 mail, return receipt requested, to Santa Clara County Department of
20 Correction, CSI Vicari DOE, and the District Attorney for the County of
21 Santa Clara, on May 14th, 2008.

22 Signed:  Dated: 5-14-08